A **GAN CHONG GUAN TRANSPORT SDN BHD**

v.

KETUA PENGARAH JABATAN PENGANGKUTAN JALAN MALAYSIA & ORS

B

COURT OF APPEAL, PUTRAJAYA
JEFFREY TAN JCA
BALIA YUSOF WAHI JCA
ALIZATUL KHAIR JCA
C [CIVIL APPEAL NO: J-01-(IM)108-2008]
25 AUGUST 2011

ADMINISTRATIVE LAW: *Remedies - Enforcement of public duties - Claim for declaratory/mandatory order for rectification of registration*
D *certificate of vehicle - Whether claim against public authorities - Whether dispute has substantive principles of public law - Whether dispute suitable for judicial review - Whether prayers should not have been struck out on the ground of non-compliance of O. 53, Rules of the High Court 1980*

ROAD TRAFFIC: *Compensation - Claim for - General and special*
E *damages - Number of chassis of vehicle different from that of certificate of registration - Whether there was a failure to detect the mistake at the point of registration of vehicle - Whether fifth respondent had a duty to verify all information correct - Whether fifth respondent failed to carry*
F *out its obligations that caused foreseeable loss to appellant - Whether first and second respondents liable for any failure by fifth respondent to carry out its obligations - Road Transport Act 1987, s. 126 - Quantum of damages - Whether to be assessed*

This was an appeal against the decision of the learned judge
G dismissing the appellant's claim against the first to sixth respondents for, *inter alia*, a declaration/mandatory order that the registration certificate of vehicle bearing number JDW 3301 be rectified to reflect the number of the chassis as appearing on the body of the vehicle, and for general and special damages. The
H facts were that the appellant had purchased the said vehicle from Metro Cosmos Express Tours & Transport Sdn Bhd. The fifth respondent, who was licensed by the Minister of Transport to conduct examinations and inspections of motor vehicles on behalf of the first and second respondents, pursuant to s. 126 of the
I Road Transport Act 1987 ('the Act'), had inspected JDW 3301 since its importation/registration on 14 occasions, and the remark had, on each occasion, been "lulus" or "passed." However, on

13 May 2002, the fifth respondent discovered that the number of the chassis was different from that of the certificate of registration. The appellant contended that this discrepancy was caused by errors committed by the respondents. The learned judge, however, had dismissed the plaintiff's claims on these grounds (i) non-compliance of O. 53, Rules of the High Court 1980 and (ii) that the chassis of the said vehicle was replaced prior to the examination. Thus, the appellant appealed.

Held (allowing the appeal against fifth and sixth respondents; dismissing the appeal against first, second, third and fourth respondents)
Per Jeffrey Tan JCA (delivering the judgment of the court):

(1) Order 53 RHC is the appropriate procedure only if a dispute has substantive principles of public law *(Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors)*. The claim herein, which was based on breach of duty and negligence, was more fact-based than anything else. It was not only against public authorities, but was also against a defendant (fifth respondent) who was licensed by the Minister of Transport to examine and inspect the said vehicle on behalf of the first and second respondents, and who was allegedly negligent in the examination and inspection of the said vehicle. There was also another defendant (sixth respondent) who was not a public authority. Thus, this dispute was not suitable for judicial review. The prayers for the declaration and the mandatory order should not have been struck out on the ground of non-compliance with O. 53. (para 7)

(2) The deductions that the number of the chassis when examined on those fourteen occasions was YV2A4A2 A0G08800017 (as in the certificate of registration) and that the chassis was replaced before the examination, could not be reconciled with the total body of evidence and/or with the probabilities presented by the facts. All import documentation, namely the invoice, bill of lading and certificate of origin had the number of the chassis as YV2F7A2A0GC880017, which was the number found by DW5 on the mentioned date. All documents supported that the number of the chassis, when imported, was YV2F7A2A0GC880017. That the number of the chassis when examined on 13 May 2002 tallied with the import

documentation was wholly consistent with the fact that the chassis when examined on 13 May 2002 was the same chassis that was imported. The absence of evidence of tampering refuted that the chassis could have been replaced before examination on 13 May 2002. That the number of the chassis was different from the number stated in the certificate of registration was all down to human error. (paras 12, 16 & 17)

(2a) The first document that had YV2A4A2A0G08800017 as the number of the chassis, was the letter dated 6 February 1996 of the sixth respondent. That was the initial mistake by the sixth respondent which was not picked up by the fifth respondent who had the duty under the Act to verify that all information was correct to the public at large. Thereafter, that number was acted upon as truth. It was clear that the number in the certificate of registration was a mistake that emanated from the said letter of the sixth respondent. Thus, the deductions of the lower court were clearly wrong. Proper inferences were not drawn from the facts and vital evidence, such as the import documentation and the letter dated 6 February 1996 of the sixth respondent, were overlooked and therefore were not given any weight. (paras 19 & 21)

(3) The appeal against the fifth and sixth respondents was allowed (2/3 against the fifth respondent and 1/3 against the sixth respondent). The sixth respondent who provided the wrong particulars was not blameless. But the fifth respondent, who had the duty to examine and inspect vehicles under the Act, must bear the greater blame, for the failure to detect the mistake at the point of registration of the said vehicle, for the failure to enter the correct particulars of the said vehicle, and for the failure to carry out its obligations under the Act that caused foreseeable loss to the appellant. The first and second respondents, however, were not liable for any failure by the fifth respondent to carry out its obligations under the Act. On account of s. 126(6) of the Act, the appeal against the first and second respondents were dismissed. Also, there was no case against the third and fourth respondents. (paras 8, 9 & 22)

Bahasa Malaysia *Translation Of Headnotes*

Ini adalah rayuan perayu terhadap keputusan yang arif hakim menolak tuntutan perayu terhadap responden pertama hingga keenam untuk, antara lain, satu deklarasi/perintah mandatori supaya sijil pendaftaran kenderaan JDW 3301 diperbetulkan untuk mencerminkan nombor chassis seperti yang terdapat pada badan kenderaan, dan juga untuk gantirugi am dan khas. Fakta menunjukkan bahawa perayu telah membeli kenderaan tersebut dari Metro Cosmos Express Tours & Transport Sdn Bhd. Responden kelima, yang dilesenkan oleh Menteri Pengangkutan untuk menjalankan ujian dan pemeriksaan kenderaan bermotor bagi pihak responden pertama dan kedua, menurut s. 126 Akta Pengangkutan Jalan 1987 ('Akta'), telah memeriksa JDW 3301 sebanyak 14 kali sejak pengimportan/pendaftaran, dan pendapat pada setiap kali adalah "lulus" atau "passed." Walaubagaimanapun, pada 13 Mei 2002, responden kelima mendapati bahawa nombor pada chassis adalah berbeza daripada perakuan pendaftaran. Perayu berhujah bahawa percanggahan tersebut disebabkan kesalahan-kesalahan yang dilakukan oleh responden-responden. Yang arif hakim, walaubagaimanapun, telah menolak tuntutan plaintif atas alasan-alasan (i) ketidakpatuhan A. 53 Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT') dan (ii) bahawa chassis kenderaan tersebut telah digantikan sebelum pemeriksaan. Oleh itu, perayu membuat rayuan ini.

Diputuskan (membenarkan rayuan terhadap responden kelima dan keenam; menolak rayuan terhadap responden pertama, kedua, ketiga dan keempat)
Oleh Jeffrey Tan HMR (menyampaikan penghakiman mahkamah):

(1) Aturan 53 KMT adalah prosedur yang sesuai hanya apabila pertikaian mempunyai prinsip undang-undang awam yang substantif *(Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors)*. Tuntutan di sini, yang berdasarkan perlanggaran kewajipan dan kecuaian, lebih berdasarkan fakta-fakta. Ia bukan sahaja terhadap pihak berkuasa awam, tetapi juga terhadap defendan (responden kelima) yang dilesenkan oleh Menteri Pengangkutan untuk memeriksa dan meneliti kenderaan tersebut bagi pihak responden pertama dan kedua, dan yang didakwa cuai di dalam pemeriksaan dan inspeksi kenderaan tersebut. Terdapat juga satu lagi defendan (responden keenam) yang bukan pihak berkuasa awam. Oleh

A itu, pertikaian ini tidak sesuai untuk semakan kehakiman. Tuntutan untuk deklarasi dan perintah mandatori tidak sepatutnya dibatalkan atas alasan ketidakpatuhan A. 53.

(2) Kesimpulan-kesimpulan bahawa nombor chassis apabila
B diperiksa 14 kali adalah YV2A4A2A0G08800017 (seperti di dalam perakuan pendaftaran) dan bahawa chassis telah diganti sebelum pemeriksaan, tidak sesuai dengan apa yang terdapat dalam keseluruhan keterangan dan/atau dengan kebarangkalian yang dibentangkan oleh fakta-fakta. Semua
C dokumentasi import, iaitu invois, bil muatan dan sijil asal mempunyai nombor chassis YV2F7A2A0GC880017, iaitu nombor yang didapati oleh DW5 pada tarikh yang disebut. Semua dokumen-dokumen menyokong nombor chassis, apabila diimport, adalah YV2F7A2A0GC880017. Bahawa
D nombor chassis apabila diperiksa pada 13 Mei 2002 adalah bersamaan dengan dokumentasi import, adalah konsisten dengan fakta bahawa chassis apabila diperiksa pada 13 Mei 2002, adalah chassis yang sama yang telah diimport. Ketiadaan bukti mengusik menyangkal dakwaan bahawa
E chassis telah digantikan sebelum pemeriksaan pada 13 Mei 2002. Bahawa nombor chassis adalah berbeza daripada nombor yang dinyatakan di dalam perakuan berdaftar adalah disebabkan kesilapan manusia.

F **(2a)** Dokumen pertama yang mengandungi YV2A4A2A0G08800017 sebagai nombor chassis adalah surat responden keenam bertarikh 6 Februari 1996. Itu adalah kesilapan awal responden keenam yang tidak disedari responden kelima yang mempunyai tanggungjawab di bawah Akta untuk mengesahkan
G semua maklumat adalah betul bagi orang awam. Selepas itu, nombor itu diambil sebagai nombor yang sebenar. Ia adalah jelas bahawa nombor di dalam perakuan pendaftaran adalah kesalahan yang berpunca daripada surat responden keenam. Oleh itu, kesimpulan-kesimpulan mahkamah rendah adalah
H dengan jelasnya tidak betul. Inferens-inferens yang betul tidak didapati melalui fakta-fakta dan dari keterangan sangat penting, seperti dokumentasi import dan surat responden keenam bertarikh 6 Februari 1996, telah diabaikan dan oleh itu tidak diberi sebarang pertimbangan.

I **(3)** Rayuan ini terhadap responden kelima dan keenam dibenarkan (2/3 terhadap responden kelima dan 1/3 terhadap responden keenam). Responden keenam yang telah memberi

butir-butir yang tidak betul juga telah melakukan kesalahan. Tetapi responden kelima, yang mempunyai tanggungjawab untuk memeriksa dan meneliti kenderaan-kenderaan di bawah Akta, mesti menanggung kesalahan yang lebih besar, kerana kegagalan mengesan kesalahan pada titik pendaftaran, kegagalan untuk memasukkan butir-butir betul kenderaan tersebut, dan untuk kegagalan menjalankan obligasinya di bawah Akta yang telah menyebabkan kerugian yang dijangkakan kepada perayu. Responden pertama dan kedua, walaubagaimanapun, tidak bertanggungjawab untuk sebarang kegagalan responden kelima dalam menjalankan obligasinya di bawah Akta. Atas akaun s. 126(6) Akta, rayuan terhadap responden pertama dan kedua ditolak. Juga, tidak terdapat kes terhadap responden ketiga dan keempat.

Case(s) referred to:

Ahmad Jefri Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors [2010] 5 CLJ 865 FC ***(refd)***

Blay v. Pollard & Morris [1930] 1 KB 628 ***(refd)***

China Airlines Ltd v. Maltran Air Corp Sdn Bhd & Another Appeal [1996] 3 CLJ 163 FC ***(refd)***

Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad [2011] 1 CLJ 1 FC ***(refd)***

Haji Mohamed Dom v. Sakiman [1955] 1 LNS 26 HC ***(refd)***

Jerneh Insurance Corporation Sdn Bhd v. Hai Heng Enterprise Sdn Bhd [2002] 4 MLJ 332 ***(refd)***

Legislation referred to:

Road Transport Act 1987, s. 126(6)

Rules of the High Court 1980, O. 2 r. 1(1), (3), O. 18 r. 19(b), (d), O. 53 r. 1

For the appellant - Dr Wong Kim Fatt (KH Tan with him); M/s KH Tan & Co

For the 1st, 2nd, 3rd & 4th respondents - Iznan Ishak SFC; AG's Chambers

For the 5th respondent - Hairul Azam Hambali; M/s Azam Lim & Pang

For the 6th respondent - M Robert; M/s Yae Seng Wai & Partners

Reported by Suhainah Wahiduddin

JUDGMENT

Jeffrey Tan JCA:

[1] This is an appeal against the decision of the learned judge who dismissed the appellant's claim against the 1st-6th respondents for *inter alia* a declaration and or a mandatory order that the registration certificate of vehicle bearing number JDW

A 3301 be rectified to reflect the number of the chassis as appearing on the body of the vehicle, and for general and special damages. Basically, the claim for the declaration and the mandatory order was dismissed for non-compliance with O. 53 while the claim for damages was dismissed on the ground "that the chassis of the
B said vehicle was replaced prior to examination ... on 13 May 2002".

[2] The background facts were as follows. JDW 3301 was imported by the 6th defendant/6th respondent in early 1996.
C Sometime in 1998 (see p. 167 of the appeal record), the plaintiff/appellant purchased JDW 3301 from Metro Cosmos Express Tours & Transport Sdn Bhd. The relevant certificate of registration of JDW 3301 had the following particulars:

D

No. Enjin:	7D 71F 914 558 558
No. Chassis:	YV2A4A2A0G08800017
Buatan:	Volvo
Nama Model:	FL 7/34
E Keupayaan Enjin:	6700 S.P
Tahun Dibuat:	1991
Tarikh Pendaftaran:	1 March 1996

F **[3]** Since importation and/or registration, JDW 3301 was inspected on no less than 14 occasions by the 5th defendant/5th respondent, who was licensed by the Minister of Transport to conduct examinations and inspections of motor vehicles on behalf of the 1st and 2nd defendants/1st and 2nd respondents, pursuant
G to s. 126 of the Road Transport Act 1987 (Act). On each occasion that it was inspected by the 5th respondent, the remark was "lulus" or "passed". But on 13 May 2002, the 5th respondent discovered that the number of the chassis was different from that of the certificate of registration. While the
H certificate of registration had it as YV2A4A2A0G08800017, the number on the chassis was YV2F7A2A0GC880017. JDW 3301 was examined by the Chemistry Department, who found that the number of the chassis (YV2F7A2A0GC880017) had not been tampered – "Berdasarkan kepada pemeriksaan saya berpendapat
I bahawa nombor casis tersebut tidak terganggu (No Tampering)".

[4] In para. 17 of their defence (138AR), the 1st to 4th respondents averred that the reliefs sought by the appellant were contrary to O. 53 of the Rules of the High Court 1980, in that leave had not been obtained for the commencement of the proceeding. But that pleading was just left by the wayside, not until after the entire case had closed and all oral evidence had been recorded and witnesses' statements had been filed. In their written submissions to the court below (491AR), the 1st to 4th respondents contended that the instant proceedings should have been brought by way of judicial review, while the appellant replied (see 523AR) that judicial review was not the exclusive procedure, that remedies for the protection of private rights could be given in both private or public law proceedings, and that "judicial review" was not amongst the "Isu-isu Untuk Dibicarakan".

[5] Enclosure 52, which was supposed to have been that "Isu-isu Untuk Dibicarakan" and so could settle the question as to whether "judicial review" was an agreed issue, was not to be found in the appeal record. However, there was another document at hand that said that "judicial review" was not an agreed issue. In their written submission (489AR) to the court below, where the 1st to 4th respondents had carefully listed out the agreed issues, "judicial review" was not one of the agreed issues. Therefore, *albeit* that it was pleaded, it would seem that the appellant was right that "judicial review" was not an agreed issue. Be that as it may, it was held by the learned judge (55AR) that the "Isu-isu Untuk Dibicarakan" concerned issues of fact but that the non-compliance of O. 53 was a matter of law which could "be ventilated at the stage of submissions or at any stage of the proceedings", and that the appellant could not have been taken by surprise by "judicial review" since it had been pleaded.

[6] A point of law may be raised at any stage of a proceeding, with or without notice (see *Dato' Seri Anwar Ibrahim v. Tun Dr Mahathir Mohamad* [2011] 1 CLJ 1 per Arifin Zakaria CJ (Malaya), as he then was, at para. 6). We wholly accept that O. 53 governs "all applications seeking the relief specified in para. 1 of the Schedule to the Courts of Judicature Act 1964 and for the purposes therein specified" (O. 53 r. 1) and that "an application for any of the reliefs specified in para. 1 of the Schedule to the Courts of Judicature Act 1964 (other than an application for an order of *habeas corpus*) shall be in Form 111A" (O. 53 r. 2). But O. 53 has to do with the mode of application. The challenge to the procedure adopted by the appellant was not a point of law

but a matter of procedure that ought to have been raised at the onset (see *Ahmad Jefri bin Mohd Jahri v. Pengarah Kebudayaan & Kesenian Johor & Ors* [2010] 5 CLJ 865, where the action was struck out under O. 18 r. 19(b) or (d) of the Rules of the High Court 1980) and not after the 1st-4th respondents had allowed the claim to proceed in the mode of application as adopted by the appellant, and not after all evidence had been recorded and the entire case had closed. Had that issue been raised at the onset, it could have been different. The appellant could then have remedied the irregularity by an application to convert the proceeding to the mode of application as required by O. 53. But to allow that issue to be raised at the close of the entire case, it denied the appellant all opportunity to remedy the mode of the proceeding. On the other hand, no injustice would be caused, had that issue been disallowed. All evidence had been recorded, and any insistence on the proper mode of the application at that late stage would not save any judicial time nor expedite the disposal of the action. Moreover, whatever failure to comply with O. 53 was an irregularity (see O. 2 r. 1(1)), and O. 2 r. 1(3) provided that a proceeding should not be wholly set aside on the ground that the proceeding was required by the Rules to be begun by an originating process other than the one employed. Admittedly, para. 17 of the defence averred that the mode of application should have been by way of judicial review. But given that the 1st - 4th respondents had participated in the proceeding without any objection whatsoever to the mode of the application, by filing a defence and by calling witnesses, which conduct was consistent with waiver and or abandonment of all procedural objections, it was just too late to contend that the mode of application was wrong. Trial had proceeded on the agreed issues. "Judicial review", which was not an agreed issue, was outside the scope of the agreed issues upon which trial had commenced and so should not have been taken up for consideration (see *Jerneh Insurance Corporation Sdn Bhd v. Hai Heng Enterprise Sdn Bhd* [2002] 4 MLJ 332, where it was held by Richard Malanjum J, as he then was, that as the approach taken in the case was that there was no distinction as to whether the defendants were common carriers, private carriers and/or as bailees of the cargo, and that for the defendants to raise such an issue at the close of the trial was an 'ambush' upon the plaintiffs). The claim ought to have been decided on the issues on the record (see *Haji Mohamed Dom v. Sakiman* [1956] MLJ 45 where Mathew CJ in the course of his judgment at p. 45 said: "Nowhere in the pleadings is it alleged that the agreement was in the nature of a document of loan, and

the case never proceeded on that basis. In my view, once he had found that the agreement for sale was a genuine document, the learned trial judge had no alternative but to order specific performance of the agreement or to award damages. I think it is clear that a judge is bound to decide a case on the issues on the record and that if there are other questions they must be placed on the record, which in this case they were not, *Blay v. Pollard & Morris* [1930] 1 KB 628 (at p. 634)").

[7] But even if "judicial review" could be taken up at that late stage, there ought to have been an appraisal, but there was none, of the public law elements involved. Only if a dispute has substantive principles of public law, is O. 53 the appropriate procedure (see *Ahmad Jefri*). In fact, the claim, which was based on breach of duty and or negligence, was more fact based than anything else. "If a matter is under private law, though concerning a public authority, it would be inappropriate to commence the action under O. 53 ..." (see *Ahmad Jefri* per James Foong FCJ, delivering the judgment of the court). In the instant case, the claim was not only against public authorities. The claim was also against a defendant (5th respondent) who was licensed by the Minister of Transport to examine and inspect the said vehicle on behalf of the 1st and 2nd respondents, and who was allegedly negligent in the examination and inspection of the said vehicle. There was also another defendant (6th respondent) who was not a public authority. Given all the foregoing, we do not perceive that the dispute was suitable for judicial review. The prayers for the declaration and the mandatory order should not have been struck out on the ground of non-compliance with O. 53. We are however of the view that the entire claim against 1st and 2nd respondents should have been dismissed under s. 126(6) of the Act, which reads as follows:

> The authorisation of any person under subsection (3) shall not render the Federal Government liable to any person in respect of any injury, damage or loss occasioned by the failure of the person authorised or licensed to carry out his obligations under the Act in respect of which charges, fees or levy are demanded, collected and retained.

[8] The 1st and 2nd respondents were not liable to suit for any failure by the 5th respondent to carry out its obligations under the Act. On account of s. 126(6) of the Act, we unanimously dismiss this appeal against the 1st and 2nd respondents with costs against the appellant.

[9] As for the appeal against the 3rd and 4th respondents, it was conceded by Dr Wong Kim Fatt for the appellant that there was no case against the 3rd respondent. By that, it was impliedly conceded that there was also no case against the 4th respondent, who could not obviously be held vicariously liable if the 3rd respondent had no case to answer. In the light of that gracious concession, we unanimously dismissed this appeal against the 3rd and 4th respondents with costs against the appellant.

[10] The claim for damages was dismissed on the ground "that the chassis of the said vehicle was replaced prior to the examination conducted by DW5 on 13 May 2002" (67AR).

> In my view the discrepancy in the findings of DW5's examination and also the subsequent examinations both by the 5th Defendant and Jabatan Kimia with the previous 14 examinations and records appearing in the said vehicle Perakuan Pendaftaran JPJ K2, is a major discrepancy. If at all it exists all this while, it could have been spotted by the previous examiners. It makes no sense for none of them to have been able to spot the discrepancy much earlier if it really does exist. Consequently, the only irresistible inference is that the chassis of the said vehicle was replaced prior to the examination conducted by DW5 on 13.5.2002

[11] It was by inference that it was so concluded that the chassis was replaced. That inference was essentially derived from the evidence that JDW 3301 was examined on 14 different occasions, and that the number of the chassis on each examination was YV2A4A2A0G08800017 (as in the certificate of registration). It was reasoned that if the number of the chassis was indeed all the while different from that on the certificate of registration, then that would have been spotted by at least one of those 14 examiners. In that, all 14 examiners found that the number of the chassis tallied with the certificate of registration, it was further reasoned that the current number of the chassis could not have been there when the chassis was examined on those 14 occasions, and that the number of the chassis, when it was examined on those 14 occasions, must have been as stated in the certificate of registration. On that reasoning, it was deduced that the chassis must have been replaced before the examination of JDW 3301 on 13 May 2002. That deduction was not in discord with the finding of the Chemistry Department that the number (YV2F7A2A0GC880017) of the chassis had not been tampered –

"Berdasarkan kepada pemeriksaan saya berpendapat bahawa nombor casis tersebut tidak terganggu (No Tampering)". The logic was that the number (YV2F7A2A0GC880017) was in the condition "not tampered" because the chassis was different.

[12] But those deductions, that the number of the chassis when examined on those 14 occasions was YV2A4A2A0G08800017 (as in the certificate of registration) and that the chassis was replaced before the examination on 13 May 2002, could not be reconciled with the total body of evidence and or with the probabilities presented by the facts.

[13] JDW 3301 was an imported vehicle. All import documentations (428 - 430AR), namely invoice dated 13 November 1995, bill of lading dated 13 November 1995 and certificate of origin dated 16 November 1995, had the number of the chassis as YV2F7A2A0GC880017, which was the number found by DW5 on 13 May 2002 and by the Chemistry Department. But that import documentation, which was the primary proof of the number of the chassis, was totally overlooked. Because that was overlooked, it was not asked how it could be that the number of the chassis tallied with the import documentation, and how it could be that the appellant could replace the chassis, if indeed the appellant had done so, with another chassis but with a number that tallied with the import documentation. It was also not asked how it could be that the number found by DW5 was different from the import documentation, when all examination of the chassis did not reveal that the number of the chassis had been tampered. Those crucial questions, if they had been asked, would have produced a different result.

[14] The import documentation, which had to do with the importation of the vehicle, would have been handed over by the importer (6th respondent) to the 3rd respondent. The appellant, who was a subsequent buyer, would not have had possession of the import documentation. In any event, there was no evidence that the import documentation was ever in the possession of the appellant. Hence, the appellant could not have known of the number of the chassis as stated in the import documentation. So, even if it were true that the appellant had replaced the chassis, it was not possible for the appellant to have been able to replace the chassis with a number that would tally with the import documentation. It could not have been that uncanny or that

A coincidental. If at all, the appellant could only have replaced the chassis with another chassis, but not with another chassis with a number that would tally with the import documentation.

[15] Still, for the sake of argument, let it be accepted that the
B chassis was replaced after the 14th examination. But to accept that the chassis was replaced after the 14th examination would mean that it would also have to be accepted that the chassis was immediately replaced after importation. All import documentation (428-430AR) had the number of the chassis as
C YV2F7A2A0GC880017. It was however the evidence from the 5th respondent, which was accepted by the learned judge, that the number of the chassis was YV2A4A2A0G08800017 on all 14 examinations. If that were so, then the chassis would have been replaced even before the 1st examination. When it was imported,
D the number of the chassis was YV2F7A2A0GC880017. But if the number of the chassis was YV2A4A2A0G08800017 on all 14 examinations, then that would only mean that a different chassis was examined and or that the number was different when it was first examined on 13 February 1996. As said, all 14 examinations
E did not reveal that the number had been tampered. So, if the number of the chassis was indeed YV2A4A2A0G08800017 on those 14 examinations, then it would have to be that a different chassis was examined. But to accept that a different chassis was examined on those 14 occasions would also mean to accept the
F unacceptable, that the chassis had been replaced even before the 1st of those 14 examinations. As far as it is known, JDW 3301 was lawfully imported. Any replacement of the chassis before the 1st examination would affect customs clearance or even put an end to the importation and or registration of the vehicle. There
G was no plausible reason therefore for the chassis to be immediately replaced after importation. Reasonably, it would have been that the number of the chassis when examined on the 1st occasion was as stated in the import documentation.

H **[16]** There is another compelling reason to say that the number of the chassis, when it was examined on those 14 occasions, could not have tallied with the certificate of registration. If the number of the chassis, when it was examined on those 14 occasions, was the number as stated in the certificate of
I registration, then there should be import documentation of a similar vehicle with the number of the chassis as YV2A4A2A0G08800017. But there was none. Rather, it was

accepted that 428 - 430AR was the import documentation. Now given that it was not in dispute that 428 - 430AR was the import documentation and that there was no import documentation of a chassis with YV2A4A2A0G08800017 as the number, it should reasonably follow that the number of the chassis, when imported, was YV2F7A2A0GC880017. The plating certificate of the Department of Transport (293AR) which was endorsed by the 6th respondent and which certified that the particulars of the vehicle tallied with the import documentation (238AR) and the declaration of imported goods by the 6th respondent (291AR) all affirmed that the number of the chassis, when imported, ended with 880017. The certificate of insurance dated 13 November 1995 (431AR) and the invoice of the forwarding agent dated 14 December 1995 (432AR) also affirmed that the number of the chassis, when imported, ended with 880017. All documents supported that the number of the chassis, when imported, was YV2F7A2A0GC880017. On the evidence, it was clear that the number of the chassis, when imported, was YV2F7A2A0GC880017.

[17] That the number of the chassis when examined on 13 May 2002 tallied with the import documentation, was wholly consistent with the fact that the chassis when examined on 13 May 2002, was the same chassis that was imported. The absence of evidence of tampering refuted that the chassis could have been replaced before examination on 13 May 2002. That the number of the chassis was different from the number stated in the certificate of registration was all down to human error.

[18] It was the finding of the learned judge that "what was supplied to the JPJ either by the person who first registered the vehicle or by the plaintiff or the 5th defendant were correct all along until the examination of the vehicle on 13 May 2002" (62AR). But that finding could not, with respect, be further from the truth. The vehicle was registered on 1 March 1996, that is, after the 1st examination by the 5th respondent. By a letter dated 6 February 1996 (294AR), that is, before the registration of the said vehicle, the 6th respondent applied to the 2nd Respondent for the registration of the said vehicle in the name of Metro Cosmos Express Tours and Transport Sdn Bhd. But in that letter, the 6th respondent gave the number of the chassis as YV2A4A2A0G08800017, which was not the number of the chassis as stated in the plating certificate, in the import documentation or in the declaration of imported goods. In its offer of sale of the said vehicle (295AR) to Metro Cosmos Express Tours and

A Transport Sdn Bhd., the 6th respondent also gave the number of the chassis as YV2A4A2A0G08800017, which again was not the number of the chassis as stated in the plating certificate, in the import documentation or in the declaration of imported goods. Thereafter, that exact number then appeared in the certificate of
B registration, in the "perakuan pemeriksaan", and in the documents that followed. But before registration of the said vehicle, the number of the chassis was always YV2F7A2A0GC880017. A different number first appeared in the application of the 6th Respondent to register the said vehicle in the name of the Metro
C Cosmos Express Tours and Transport Sdn Bhd. The certificate of registration that soon followed had the number of the chassis as exactly the number provided by the 6th respondent in the letter dated 6 February 1996. That certificate of registration, although issued by the 1st and or 2nd respondents, was based on the
D examination of the vehicle by the 5th respondent. As said, the chassis could not have been replaced before the 1st examination or before the examination on 13 May 2002. The number of the chassis, when imported, was YV2F7A2A0GC880017. If there was the importation of a chassis with any other number, the 6th
E respondent, as the importer, should be able to prove it. But all that was before the court, in terms of the import documentation, was 428 - 430AR, which had the number of the chassis as YV2F7A2A0GC880017.

F **[19]** The first document that had YV2A4A2A0G08800017 as the number of the chassis was the aforesaid letter dated 6 February 1996 of the 6th respondent. That was the initial mistake by the 6th respondent, in the number of the chassis. And that mistake was not picked up by the 5th respondent who had the duty
G under the Act to verify that all information was correct to the public at large. Thereafter, that number was acted upon as truth. It was so clear that the number in the certificate of registration was a mistake that emanated from the letter dated 6 February 1996 of the 6th respondent.

H **[20]** The acid test is this. Even locally manufactured vehicles have certificates of manufacture. A similar vehicle with the number of the chassis as YV2A4A2A0G08800017 should have an import documentation. In the instant case, the certificate of registration alone could not stand as any primary proof that there was a
I chassis with the number YV2A4A2A0G08800017. And without

the import documentation, it would not add up that there would have been a chassis with the number YV2A4A2A0G08800017 to have been examined by the 5th respondent.

[21] Of course, an appellate court should be slow to disturb the findings of fact by a lower court or the findings by a lower court which depended on the credibility of witnesses (see *China Airlines Ltd v. Maltran Air Corp Sdn Bhd & Another Appeal* [1996] 3 CLJ 163). We have limited our review to the deductions of the lower court which depended to a large extent on a finding (the number of the chassis on all 14 examinations was YV2A4A2A0G08800017) that, on the evidence, was clearly wrong. And in our review, we find that proper inferences were not drawn from the facts and that vital evidence, such as the import documentation and the letter dated 6 February 1996 of the 6th respondent, were overlooked and therefore were not given any weight. We have to interfere to put things right.

[22] For reasons given hereinbefore, we unanimously allow this appeal against the 5th and 6th respondents, with costs to the appellant. As for the apportionment of liability, we assess that as 2/3 against the 5th respondent and 1/3 against the 6th respondent. The 6th respondent who provided the wrong particulars was not blameless. But the 5th respondent, who had the duty to examine and inspect vehicles under the Act, must bear the greater blame, for the failure to detect the mistake at the point of registration of the said vehicle, for the failure to enter the correct particulars of the said vehicle, and for the failure to carry out its obligations under the Act that caused foreseeable loss to the appellant. As for the quantum of damages, we direct that it be assessed by the court below.